

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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|-------------------------------|---|--------------------------|
| SECURITIES AND EXCHANGE |) | |
| COMMISSION, |) | |
| |) | |
| Plaintiff, |) | |
| |) | NO. 1:25-CV-00616 |
| v. |) | |
| |) | Judge Lindsay C. Jenkins |
| ARETE WEALTH MANAGEMENT, LLC, |) | |
| ARETE WEALTH ADVISORS, LLC, |) | |
| JOEY DALE MILLER, |) | |
| JEFFREY SCOTT LARSON, |) | |
| RANDALL SCOTT LARSON, and |) | |
| UNBO CHUNG, |) | |
| |) | |
| Defendants. |) | |

DEFENDANT ARETE WEALTH ADVISORS, LLC’S MOTION TO DISMISS

Defendant Arete Wealth Advisors, LLC (“AWA”), by and through its attorneys, and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, hereby moves this Court to dismiss the Third Claim For Relief (“Claim Three”) and Sixth Claim For Relief (“Claim Six”) with prejudice, and states the following:

1. In Claim Three, the SEC asserts that AWA committed a fraud under Section 206(1) or negligent misconduct under Section 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”). Dkt. 1 at ¶¶310-12. The SEC alleges that certain investment adviser representatives of AWA solicited clients to purchase stock in Zona Energy, Inc. (“Zona”) without receiving AWA’s approval, in a prohibited practice known as “selling away.” *Id.* at ¶1. Once it was determined that Zona was a fraud, certain investors entered into Settlement Agreements with the individual Arete representatives. *Id.* at ¶¶1-13. The SEC concedes that AWA was not involved in the Zona fraud and was not a party to the Settlement Agreements. *Id.* at ¶¶1-4, 247-48. The SEC’s novel theory is

that AWA violated the Adviser's Act because the Settlement Agreements somehow misled those investors (i) into believing that their advisory agreements had been amended to limit AWA's fiduciary duties or (ii) by misstating or omitting certain items in the agreements.

2. Claim Three should be dismissed with prejudice because it fails to allege fraud with particularity, fails to allege that AWA acted with the requisite intent to commit fraud or negligent misconduct, fails to allege that the Settlement Agreement could give rise to a claim against AWA for fraud or negligence, and otherwise fails to state a claim upon which relief can be granted. In addition, Claim Three is based on a novel and unsupported theory that deprives AWA of its constitutional right to due process and fair notice.

3. In Claim Six, the SEC alleges that AWA violated Section 206(4) of the Advisers Act because AWA did not timely and fully update its written compliance policies. *Id.* at ¶¶320-22. Claim Six should be dismissed with prejudice because it fails to state a claim upon which relief can be granted. Alternatively, in the event this Court allows Claim Six to proceed beyond this Motion, AWA moves to sever Claim Six from this matter.

WHEREFORE, for the foregoing reasons and the reasons set forth in the accompanying *Brief in Support of Motion to Dismiss*, which is incorporated herein by reference, AWA respectfully requests that this Court enter an Order dismissing Count Three and Count Six with prejudice, or alternatively severing Count Six from this action, and granting such other relief as the Court deems just and proper.

Respectfully Submitted,

ARETE WEALTH MANAGEMENT, LLC

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Dated: April 7, 2025

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on April 7, 2025, I electronically filed the foregoing **DEFENDANT ARETE WEALTH ADVISORS, LLC'S MOTION TO DISMISS** with the Clerk of the Court using the CM/ECF system which sent notification of filing to all counsel of record.

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